nency planning dispositional hearings held pursuant to the Adoption Assistance and Child Welfare Act of 1980, 42 USC 675(5), do not fall within the scope of "contested cases" as defined in the Administrative Procedure Act. OAG 88-9.

Collateral References. Determination by board on its own knowledge, without expert evidence, in proceeding for revocation of license of physician. 6 A.L.R.2d 675.

Administrative decision or finding based on evidence secured outside of hearing, and without presence of interested party or counsel. 18 A.L.R.2d 571.

Right of witness to refuse to answer, on the ground of self-incrimination, as to membership in or connection with party, society, or similar organization or group. 19 A.L.R.2d 400.

Privilege applicable to judicial proceedings as extending to administrative proceedings. 45 A.L.R.2d 1296.

Admissibility in administrative proceedings of surveys or polls of public or consumer's opinion, recognition, preference, or the like. 76 A.L.R.2d 633.

Comment note on hearsay evidence in proceedings before state administrative agencies. 36 A.L.R.3d 12.

67-5252. Presiding officer — Disqualification. — (1) Except as provided in subsection (4) of this section, any party shall have the right to one (1) disqualification without cause of any person serving or designated to serve as presiding officer, and any party shall have a right to move to disqualify for bias, prejudice, interest, substantial prior involvement in the matter other than as a presiding officer, status as an employee of the agency hearing the contested case, lack of professional knowledge in the subject matter of the contested case, or any other cause provided in this chapter or any cause for which a judge is or may be disqualified.

(2) Any party may petition for the disqualification of a person serving or designated to serve as presiding officer:

(a) within fourteen (14) days after receipt of notice indicating that the person will preside at the contested case; or

(b) promptly upon discovering facts establishing grounds for disqualification, whichever is later.

Any party may assert a blanket disqualification for cause of all employees of the agency hearing the contested case, other than the agency head, without awaiting designation of a presiding officer.

(3) A person whose disqualification for cause is requested shall determine in writing whether to grant the petition, stating facts and reasons for the determination.

(4) Where disqualification of the agency head or a member of the agency head would result in an inability to decide a contested case, the actions of the agency head shall be treated as a conflict of interest under the provisions of section 59-704, Idaho Code.

(5) Where a decision is required to be rendered within fourteen (14) weeks of the date of a request for a hearing by state or federal statutes or rules and regulations, no party shall have the right to a disqualification without cause. [I.C., § 67-5252, as added by 1992, ch. 263, § 37, p. 783; am. 1993, ch. 216, § 109, p. 587.]

Compiler's notes. Sections 108 and 110 of S.L. 1993, ch. 216 are compiled as §§ 67-5250 and 67-5273, respectively.

67-5253. Ex parte communications. — Unless required for the disposition of ex parte matters specifically authorized by statute, a presiding

officer serving in a contested case shall not communicate, directly or indirectly, regarding any substantive issue in the proceeding, with any party, except upon notice and opportunity for all parties to participate in the communication. [1965, ch. 273, § 13, p. 701; am. and redesig. 1992, ch. 263, § 38, p. 783.]

Compiler's notes. This section was formerly compiled as § 67-5213 and was amended and redesignated as § 67-5253 by § 38 of S.L. 1992, ch. 263, effective July 1, 1993.

Cited in: Department of Health & Welfare v. Sandoval, 113 Idaho 186, 742 P.2d 992 (Ct. App. 1987).

67-5254. Agency action against licensees. — (1) An agency shall not revoke, suspend, modify, annul, withdraw or amend a license, or refuse to renew a license of a continuing nature when the licensee has made timely and sufficient application for renewal, unless the agency first gives notice and an opportunity for an appropriate contested case in accordance with the provisions of this chapter or other statute.

(2) When a licensee has made timely and sufficient application for the renewal of a license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by a reviewing court.

(3) This section does not preclude an agency from:

(a) taking immediate action to protect the public interest in accordance with section 67-5247, Idaho Code; or

(b) adopting rules, otherwise within the scope of its authority, pertaining to a class of licensees, including rules affecting the existing licenses of a class of licensees. [1965, ch. 273, § 14, p. 701; am. and redesig. 1992, ch. 263, § 39, p. 783.]

Compiler's notes. This section was formerly compiled as § 67-5214 and was amended and redesignated as § 67-5254 by § 39 of S.L. 1992, ch. 263, effective July 1, 1993.

ANALYSIS

Due process.
Suspension of license.
—Effect of bankruptcy stay.
Suspension prior to hearing.

Due Process.

Department of Insurance had both subject matter and personal jurisdiction in proceeding; because the issue of the effect of the lack of a warning letter was not raised until appeal, after insurance agent had received notice of the Department's allegations, presented evidence and received a ruling, there was no merit to insurance agent's due process assertion. Knight v. Department of Ins., 124 Idaho 645, 862 P.2d 337 (Ct. App. 1993).

Suspension of License.

—Effect of Bankruptcy Stay.

The exception under 11 U.S.C. 362(b)(4) to the automatic stay granted with regard to bankruptcy proceedings operated in favor of the Department of Insurance in a matter involving the suspension and revocation of an insurance agent's license where the agent filed for bankruptcy prior to the suspension of his license and prior to the institution of proceedings to revoke same; where the Department of Insurance contended that it was seeking the revocation of agent's insurance license based solely on his alleged fraudulent activities, the court was willing to accept the State's representations, however, if it were to appear that the purpose of the administrative proceedings was to collect premiums allegedly withheld by agent for his own use to compensate the agent's victims, such activities would likely exceed the scope of the § 362(b)(4) exception. In re Fitch, 123 Bankr. 61 (Bankr. D. Idaho 1990).

Suspension Prior to Hearing.

Where substantial evidence existed that an emergency situation existed at a licensed shelter home, the hearing officer's decision to suspend the license prior to the scheduled hearings required by § 39-3303 and this section did not deny the shelter's owners procedural due process, since, even if the suspension effectively terminated the owners' provisional license and adversely affected their economic interests, such interests were of lesser importance than the safety and welfare of the residents. Van Orden v. State, Dep't of Health & Welfare, 102 Idaho 663, 637 P.2d 1159 (1981).

67-5255. Declaratory rulings by agencies. — (1) Any person may petition an agency for a declaratory ruling as to the applicability of any order issued by the agency.

(2) A petition for a declaratory ruling does not preclude an agency from initiating a contested case in the matter.

(3) A declaratory ruling issued by an agency under this section is a final agency action. [I.C., § 67-5255, as added by 1992, ch. 263, § 40, p. 783.]

Compiler's notes. Section 41 of S.L. 1992, ch. 263 contained repeals and § 42 is compiled as § 67-5270.

67-5256 — 67-5269. [Reserved.]

67-5270. Right of review. — (1) Judicial review of agency action shall be governed by the provisions of this chapter unless other provision of law is applicable to the particular matter.

(2) A person aggrieved by final agency action other than an order in a contested case is entitled to judicial review under this chapter if the person complies with the requirements of sections 67-5271 through 67-5279, Idaho Code.

(3) A party aggrieved by a final order in a contested case decided by an agency other than the industrial commission or the public utilities commission is entitled to judicial review under this chapter if the person complies with the requirements of sections 67-5271 through 67-5279, Idaho Code. [I.C., § 67-5270, as added by 1992, ch. 263, § 42, p. 783.]

Compiler's notes. Section 41 of S.L. 1992, ch. 263 contained repeals and § 40 is compiled as § 67-5255.

Sec. to sec. ref. Sections 67-5270 through 67-5279 are referred to in § 41-227.

Inadequate Findings of Fact.

Where the Department of Health's findings of fact were inadequate to support its decision that nursing home exceeded Medicaid percentile caps was due to inefficient operation the matter was remanded to the Department of Health with instructions that the Department should make specific findings of fact and conclusions of law with respect to the questions of whether nursing home was efficiently operated and to what extent its costs above the percentile cap were justified based solely upon the present evidentiary record, without the taking of any new or additional evidence. Idaho City Nursing Home v. Department of Health, 124 Idaho 116, 856 P.2d 1283 (1993) decision under former § 67-5215.

DECISIONS UNDER PRIOR LAW

ANALYSIS

In general.
Agency.
Appeals.
Application.

Conclusions of law.
Contested case.
Denial of application for medical indigency assistance.
scharge of employee.
Discretion of commission.
Erroneous advice provided by agency.
Evidence.
Examination of record.
Exhaustion of administrative remedies.
Final decisions.
Findings.
Method of review.
Record of agency proceedings.
Remand.
Remand to administrative board.
Reversal.
Right to judicial appeal.
Scope of review.
Standard of review.
Subdivision plat applicant.
Trial de novo.
Zoning.
—Aggrieved person.

In General.

An appeal, which was not filed in either the county in which a hearing was held or in the county in which a final decision was made, could not be perfected. Briggs v. Golden Valley Land & Cattle Co., 97 Idaho 427, 546 P.2d 382 (1976).

Agency.

Subsection (3) of § 23-1015 did not make the county and "agency" for the purposes of former laws so as to grant judicial review of a decision to a person other than an applicant. Briggs v. Golden Valley Land & Cattle Co., 97 Idaho 427, 546 P.2d 382 (1976).

Under former law the Board of Corrections was not an "agency" within the meaning of the Administrative Procedures Act, and the judicial review provision did not apply to it. Therefore, there was no appeal to the district court from decisions of the Board of Corrections. Carman v. State, Comm'n of Pardons & Parole, 119 Idaho 642, 809 P.2d 503 (1991).

When the Commission of Pardons and Parole was exercising the powers and duties delegated to it by the Board of Corrections in matters involving parole and probation, it was exercising powers granted to the Board under Idaho Const., Art. 10 § 5. Therefore, it was not an "agency" within the meaning of the Administrative Procedures Act, and former law inapplicable to a parole decision of the Commission of Pardons and Parole. Carman v. State, Comm'n of Pardons & Parole, 119 Idaho 642, 809 P.2d 503 (1991).

Appeals.

Given the close alignment of the Commission of Pardons and Parole with the Idaho Board of Corrections, the fact that the Commission was exercising the parole power delegated to it by the Board, and the fact that the legislature found it necessary to specifically give authority to the Commission to promulgate regulations pursuant to the Administrative Procedures Act in U 20-223(a), the Supreme Court of Idaho concluded that the Commission's parole and probation functions, as were those of the Board of Corrections before it, were exempt from the appeal provision of former law. Carman v. State, Comm'n of Pardons & Parole, 119 Idaho 642, 809 P.2d 503 (1991).

Application.

The 30-day filing deadline in former law applied to the period of time allowed for filing a petition for judicial review in district court after a final decision of the administrative agency and did not apply to limit the time within which to request a hearing before the board of county commissioners. University of Utah Hosp. v. Minidoka County, 120 Idaho 91, 813 P.2d 902 (1991).

Conclusions of Law.

The finding of county commissioners that proposed change in zone classification was in accordance with the intent and policy of the comprehensive plan was not a finding of fact, but rather a conclusion of law which if erroneous could be corrected on judicial review. Love v. Board of County Comm'rs, 105 Idaho 558, 671 P.2d 471 (1983).

Contested Case.

The Department of Employment was not required or entitled to appeal the findings and recommendations of the Commission of Human Rights, since a hearing before the Commission on a sex discrimination claim, held before the Commission was granted authority to issue orders, was not a "contested case." Hoppe v. Nichols, 100 Idaho 133, 594 P.2d 643 (1979).

Decision of Board of County Commissioners denying hospital its right to any notices required to be given under the Idaho Medical Indigency Statutes, including notice of denial or notice of partial denial for county medical aid was not reviewable since it did not involve a contested case. Idaho Falls Consol. Hosps. v. Board of County Comm'rs, 104 Idaho 628, 661 P.2d 1227 (1983).

Denial of Application for Medical Indigency Assistance.

Although the legislature clearly provided that a petition for judicial review to the district court must be filed within 30 days after an administrative agency's final decision, both the Administrative Procedure Act and the Medical Indigency Act made no provision as to the time within which a hospital, health care provider or applicant for assistance must request a hearing before the board of commis-

ıners after its application for medical .digency assistance had been denied. In the absence of a county ordinance adopting the guidelines, or any guidance or direction from the legislature as to the time within which a request for hearing must be made after denial of the application, the legislature did not intend to set a specific time limit within which a request for hearing must be made. University of Utah Hosp. v. Minidoka County, 120 Idaho 91, 813 P.2d 902 (1991).

Discharge of Employee.

Where the evidence in the record supported board of education's findings that campus security chief's conduct, which included use of racial slurs during conversations with reporter, evidenced traits of employment incompatibility and that it adversely affected the welfare of college, the board's conclusion that "good cause" existed to discharge him, was not arbitrary, capricious, or an abuse of discretion. Allen v. Lewis-Clark State College, 105 Idaho 447, 670 P.2d 854 (1983).

Discretion of Commission.

The fact that no harm came to the clients involved, and that restitution was subsequently made to the former broker did not ~le out suspension of a broker's license; and ;e the Real Estate Commission had the ;er to revoke the broker's license for violation of its regulations, a five-month suspension was not an abuse of discretion which would require reversal. Staff of Idaho Real Estate Comm'n v. Parkinson, 100 Idaho 96, 593 P.2d 1000 (1979).

The failure to include medical expenses in the determination of a budget deficit was not arbitrary and capricious. Hayman v. State, Dep't of Health & Welfare, 100 Idaho 710, 604 P.2d 724 (1979).

Erroneous Advice Provided by Agency.

Where applicants for zoning change made attempts to determine the status of their first application and were informed by the county that they would have to submit a new application, since a member of the public pursuing an action before an agency should not be penalized for following erroneous advice given by the agency and there was nothing in the record evidencing an intent by applicants to relinquish their rights under the first application for zoning change, they did not waive their right to appeal with respect to such application. Soloaga v. Bannock County, 119 Idaho 678, 809 P.2d 1157 (Ct. App. 1990).

'ence.

.hough evidence of the city council's prior approval of applications for rezoning by other developers was not in the original record of the city council hearing at which the council denied the plaintiff developer's rezoning application, the reviewing court could properly consider the evidence about the other applications since the information was of public record at the time of the plaintiff's hearing before the city council, the city council was certainly aware of its own previous actions in approving those other applications, and, in fact, the city council had stipulated that the facts concerning the other applications were true and correct. Workman Family Partnership v. City of Twin Falls, 104 Idaho 32, 655 P.2d 926 (1982).

In situations where no procedural irregularities before the administrative agency were alleged and the case heard as an administrative appeal, the hearing must be confined to the record; admitting additional evidence when procedural irregularities were not alleged in essence results in an impermissible trial de novo. Clow v. Board of County Comm'rs, 105 Idaho 714, 672 P.2d 1044 (1983).

Generally, a review is confined to the record unless there were alleged procedural irregularities before the agency and under those circumstances the statute stated that proof may be taken in the court; accordingly, where the issues in a particular action were limited and no procedural irregularities before the agency were alleged by the parties before or during the appeal hearing, the district court erred when it admitted additional evidence and entered findings of fact and conclusions of law, even if the parties had agreed to allow the court to hear additional evidence, since former law required that any additional evidence be presented before the agency. Clow v. Board of County Comm'rs, 105 Idaho 714, 672 P.2d 1044 (1983).

Where a developer appealed to the district court from an adverse decision by the county board of commissioners on his rezoning application, the district court did not err in refusing to allow the developer to augment the record before the district court with minutes of previous planning and zoning commission meetings, where the developer made no application to the court to present additional evidence as required by former law did not show why the evidence was not presented at the hearing before the county commissioners. Drake v. Craven, 105 Idaho 734, 672 P.2d 1064 (Ct. App. 1983).

Under former law, the district court erred in permitting additional evidence to be submitted on appeal; if the additional evidence was material and there was good reason for failure to present it at the proceeding before the board of commissioners, former law permitted the district court to order the taking of the additional evidence by the agency, which may then modify its findings and conclusions based upon the additional evidence. However, the district court could not hear the addi-

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tional evidence for the first time on appeal and make its own findings of fact and conclusions of law. Daley v. Blaine County, 108 Idaho 614, 701 P.2d 234 (1985).

Where the applicants' property was the only property in the area which had not been rezoned, the board of county commissioner's decision to rezone the property as commercial, even though it was contrary to the existing comprehensive plan, was supported by substantial evidence and was not clearly erroneous. Ferguson v. Board of County Comm'rs, 110 Idaho 785, 718 P.2d 1223 (1986).

Where, in the hospital's appeal of the board of county commissioners' denial of funds for medical indigency, the transcript of the board's hearing contained an extended debate regarding the board's authority to limit the issues before it, and the hospital did not suggest what other evidence of irregularities would have been submitted, the hospital was not prejudiced by the district court's refusal to expand the record by entertaining the hospital's proffer of alleged irregularities in procedure. University of Utah Hosp. v. Board of County Comm'rs, 113 Idaho 441, 745 P.2d 1062 (Ct. App. 1987).

District court properly admitted extraneous evidence relevant to procedural deficiency in the process of determining whether action involving application for zoning change should be remanded for final determination on the merits where, after making initial application, applicants were informed by county that such application was voided by moratorium, the county conducted no hearings nor were there ever any findings of fact or conclusions of law entered with respect to the application, for in effect the suspension of the application by the county was a procedural irregularity. Soloaga v. Bannock County, 119 Idaho 678, 809 P.2d 1157 (Ct. App. 1990).

Examination of Record.

Where the record on appeal indicated that a medically disabled plaintiff was afforded services, education and a rehabilitation plan as provided by law and that the plan was not completed by plaintiff although the Division of Vocational Rehabilitation did everything required of it, there was nothing in the record requiring reversal or modification of the division's decision denying him further vocational rehabilitation benefits as there were no constitutional or statutory provisions that were violated, the decision was not in excess of the division's or agency's authority, there were no unlawful procedures followed by the division; nothing in the record constituted error in view of the evidence submitted and the record considered as a whole. Fuller v. State Dep't of Educ. Div. of Vocational Rehabilitation, Inc., 117 Idaho 126, 785 P.2d 690 (Ct. App. 1990).

Exhaustion of Administrative Remedies.

State employees not able to appeal a grievance to the Personnel Commission had exhausted all administrative remedies available within the agency and were entitled to judicial review under the State Administrative Procedure Act. Sheets v. Idaho Dep't of Health & Welfare, 114 Idaho 111, 753 P.2d 1257 (1988).

In routine tax assessment complaints, the pursuit of statutory administrative remedies is a condition precedent to judicial review, however, the rule that administrative remedies must be exhausted before the district court will hear a case is a general rule and has been deviated from in some cases. Fairway Dev. Co. v. Bannock County, 119 Idaho 121, 804 P.2d 294 (1990).

The exceptions to the exhaustion of administrative remedies doctrine did not apply where the issue was the correctness of tax assessments. In such a case, the district court did not acquire subject matter jurisdiction until all the administrative remedies have been exhausted. Fairway Dev. Co. v. Bannock County, 119 Idaho 121, 804 P.2d 294 (1990).

Final Decisions.

Where letters from county officials to petitioners for zoning change referred to initial zoning application as being voided by zoning moratorium and informed them that the process initiated by their first application had been truncated, they contained nothing setting forth facts or conclusions of law regarding the first application for a zoning change, and thus they were not final decisions and did not trigger the limitation period provided for in former law. Soloaga v. Bannock County, 119 Idaho 678, 809 P.2d 1157 (Ct. App. 1990).

Findings.

Where an incorrect standard of proof was applied by the hearing officer in a hearing to determine eligibility for aid to dependent children, the district court erred in substituting its own findings and the case had to be remanded to an administrative hearing officer to resolve a conflict in the evidence. Tappen v. State, Dep't of Health & Welfare, 98 Idaho 576, 570 P.2d 28 (1977).

Judicial review of an administrative order is confined to the record under former law; accordingly, a district court improperly substituted its own findings of fact for those made by a hearing officer where the review of the district court was made on the record of the administative officer and the findings of the hearing officer were clear, concise, dispositive and supported by the evidence. Van Orden v. State, Dep't of Health & Welfare, 102 Idaho 663, 637 P.2d 1159 (1981).

If there were no findings of fact and conclu-

zoning change including the initial application, applicants conceded that their rights under the first application were never placed in issue during the 1985 proceedings because the county had made it clear it had expected them to proceed under the 1984 ordinance and the record demonstrated the county considered initial application as void, it was unnecessary for applicants to exercise an act of futility by reasserting their rights under the initial application during the proceedings under the 1984 application and thus the questions relating to the first application were properly preserved for an appeal. Soloaga v. Bannock County, 119 Idaho 678, 809 P.2d 1157 (Ct. App. 1990).

—Aggrieved Person.

A municipality or town was deemed to be an "aggrieved person" within the meaning of former law when appealing a decision of its zoning appeals board. City of Burley v. McCaslin Lumber Co., 107 Idaho 906, 693 P.2d 1108 (Ct. App. 1984).

67-5271. Exhaustion of administrative remedies. — (1) A person is not entitled to judicial review of an agency action until that person has exhausted all administrative remedies required in this chapter.

(2) A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency action would not provide an adequate remedy. [I.C., § 67-5271, as added by 1992, ch. 263, § 43, p. 783.]

Sec. to sec. ref. Sections 67-5271 through 67-5279 are referred to in § 67-5270.

This section is referred to in § 67-5273.

67-5272. Venue — Form of action. — (1) Except when required by other provision of law, proceedings for review or declaratory judgment are instituted by filing a petition in the district court of the county in which:

(a) the hearing was held; or

(b) the final agency action was taken; or

(c) the aggrieved party resides or operates its principal place of business in Idaho; or

(d) the real property or personal property that was the subject of the agency decision is located.

(2) When two (2) or more petitions for judicial review of the same agency action are filed in different counties or are assigned to different district judges in the same county, upon motion filed by any party to any of the proceedings for judicial review of the same agency action, the separate consideration of the petitions in different counties or by different district judges shall be stayed. The administrative judge in the judicial district in which the first petition was filed, after appropriate consultation with the affected district judges and the affected administrative judges, shall then order consolidation of the judicial review of the petitions before one (1) district judge in one (1) county in which a petition for judicial review was properly filed, at which time the stay shall be lifted. [I.C., § 67-5272, as added by 1992, ch. 263, § 44, p. 783; am. 1995, ch. 270, § 4, p. 868.]

Compiler's notes. Section 3 of S.L. 1995, ch. 270 is compiled as § 67-5250.

67-5273. Time for filing petition for review. — (1) A petition for judicial review of a final rule may be filed at any time, except as limited by section 67-5231, Idaho Code.

(2) A petition for judicial review of a final order or a preliminary order that has become final when it was not reviewed by the agency head or preliminary, procedural or intermediate agency action under section 67-5271(2), Idaho Code, must be filed within twenty-eight (28) days of the issuance of the final order, the date when the preliminary order became final, or the issuance of a preliminary, procedural or intermediate agency order, or, if reconsideration is sought, within twenty-eight (28) days after the decision thereon. A cross-petition for judicial review may be filed within fourteen (14) days after a party is served with a copy of the notice of the petition for judicial review.

(3) A petition for judicial review of a final agency action other than a rule or order must be filed within twenty-eight (28) days of the agency action, except as provided by other provision of law. The time for filing a petition for review shall be extended during the pendency of the petitioner's timely attempts to exhaust administrative remedies, if the attempts are clearly not frivolous or repetitious. A cross-petition for judicial review may be filed within fourteen (14) days after a party is served with a copy of the notice of the petition for judicial review. [I.C., § 67-5273, as added by 1992, ch. 263, § 45, p. 783; am. 1993, ch. 216, § 110, p. 587; am. 1995, ch. 270, § 5, p. 868.]

Compiler's notes. Sections 109 and 111 of S.L. 1993, ch. 216 are compiled as §§ 67-5252 and 67-6519, respectively.

67-5274. Stay. — The filing of the petition for review does not itself stay the effectiveness or enforcement of the agency action. The agency may grant, or the reviewing court may order, a stay upon appropriate terms. [I.C., § 67-5274, as added by 1992, ch. 263, § 46, p. 783.]

67-5275. Agency record for judicial review. — (1) Within forty-two (42) days after the service of the petition, or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the agency record. The agency record shall consist of:

(a) the record compiled under section 67-5225, Idaho Code, when the agency action was a rule;

(b) the record compiled under section 67-5249, Idaho Code, when the agency action was an order; or

(c) any agency documents expressing the agency action when the agency action was neither an order nor a rule.

(2) By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs.

(3) The court may require corrections to the record. [I.C., § 67-5275, as added by 1992, ch. 263, § 47, p. 783.]

67-5276. Additional evidence. — (1) If, before the date set for hearing, application is made to the court for leave to present additional evidence and it is shown to the satisfaction of the court that the additional evidence is material, relates to the validity of the agency action, and that:

(a) there were good reasons for failure to present it in the proceeding before the agency, the court may remand the matter to the agency with directions that the agency receive additional evidence and conduct additional factfinding.

(b) there were alleged irregularities in procedure before the agency, the court may take proof on the matter.

(2) The agency may modify its action by reason of the additional evidence and shall file any modifications, new findings, or decisions with the reviewing court. [I.C., § 67-5276, as added by 1992, ch. 263, § 48, p. 783.]

67-5277. Judicial review of issues of fact. — Judicial review shall be conducted by the court without a jury. Unless otherwise provided by statute, judicial review of disputed issues of fact must be confined to the agency record for judicial review as defined in this chapter, supplemented by additional evidence taken pursuant to section 67-5276, Idaho Code. [I.C., § 67-5277, as added by 1992, ch. 263, § 49, p. 783.]

Cited in: Jefferson County v. Eastern Idaho Regional Medical Ctr., — Idaho —, 883 P.2d 1084 (Ct. App. 1994).

67-5278. Declaratory judgment on validity or applicability of rules. — (1) The validity or applicability of a rule may be determined in an action for declaratory judgment in the district court, if it is alleged that the rule, or its threatened application interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the petitioner.

(2) The agency shall be made a party to the action.

(3) A declaratory judgment may be rendered whether or not the petitioner has requested the agency to pass upon the validity or applicability of the rule in question. [1965, ch. 273, § 7, p. 701; am. and redesig. 1992, ch. 263, § 50, p. 783.]

Compiler's notes. This section was formerly compiled as § 67-5207 and was amended and redesignated as § 67-5278 by § 50 of S.L. 1992, ch. 263, effective July 1, 1993.

Cited in: Idaho Falls Consol. Hosps. v. Board of County Comm'rs, 104 Idaho 628, 661 P.2d 1227 (1983).

ANALYSIS

Compliance with § 39-418.
Jurisdiction.
Right to challenge rules.

Compliance with § 39-418.

The remedies of this section are not available after a final determination of the Board unless the provisions of § 39-418 are strictly complied with; § 39-418 dictates the exclusive procedure for appeal or review of a final board decision unless the procedure fails to provide an adequate remedy. Lindstrom v. District Bd. of Health, 109 Idaho 956, 712 P.2d 657 (Ct. App. 1985).

Jurisdiction.

Where no final determination of the District Board of Health was involved, the Board did not raise the question of whether the action for declaratory relief was timely filed before the district court, the parties essentially agreed upon the facts, evidence was adduced in the district court for determination of one disputed factual issue, and neither party had challenged any of the court's findings, the district court had jurisdiction under § 39-417 to engage in the review authorized by this section. Lindstrom v. District Bd. of Health, 109 Idaho 956, 712 P.2d 657 (Ct. App. 1985).

Right to Challenge Rules.

While an applicant has no proprietary "right" to a license before it is duly issued, it will not be gainsaid that she has a "right" to consideration of her application under valid legal standards; this right was sufficient to

confer standing to challenge a rule. Rawson v. Idaho State Bd. of Cosmetology, 107 Idaho 1037, 695 P.2d 422 (Ct. App. 1985).

67-5279. Scope of review — Type of relief. — (1) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.

(2) When the agency was not required by the provisions of this chapter or by other provisions of law to base its action exclusively on a record, the court shall affirm the agency action unless the court finds that the action was:

(a) in violation of constitutional or statutory provisions;

(b) in excess of the statutory authority of the agency;

(c) made upon unlawful procedure; or

(d) arbitrary, capricious, or an abuse of discretion.

If the agency action is not affirmed, it shall be set aside, in whole or in part, and remanded for further proceedings as necessary.

(3) When the agency was required by the provisions of this chapter or by other provisions of law to issue an order, the court shall affirm the agency action unless the court finds that the agency's findings, inferences, conclusions, or decisions are:

(a) in violation of constitutional or statutory provisions;

(b) in excess of the statutory authority of the agency;

(c) made upon unlawful procedure;

(d) not supported by substantial evidence on the record as a whole; or

(e) arbitrary, capricious, or an abuse of discretion.

If the agency action is not affirmed, it shall be set aside, in whole or in part, and remanded for further proceedings as necessary.

(4) Notwithstanding the provisions of subsections (2) and (3) of this section, agency action shall be affirmed unless substantial rights of the appellant have been prejudiced. [I.C., § 67-5279, as added by 1992, ch. 263, § 51, p. 783.]

Compiler's notes. Section 52 of S.L. 1992, ch. 263 contained a repeal and § 53 is compiled as § 67-5291.

Cited in: Jefferson County v. Eastern Idaho Regional Medical Ctr., — Idaho —, 883 P.2d 1084 (Ct. App. 1994).

Substantial Evidence.

Where other than an advertisement in a local newspaper and a general survey sent to psychologists on current rates, health care provider presented no other documentation of its efforts to seek the services of a qualified consultant at a medicaid allowable rate, there was substantial, competent evidence to support the hearing officer's finding that health care provider did not make sufficient effort to meet the Medicaid requirements. Boise Group Homes, Inc. v. State Dep't of Health & Welfare, 123 Idaho 908, 854 P.2d 251 (1993).

67-5280 — 67-5290. [Reserved.]

67-5291. Legislative review of adopted rules. — The standing committees of the legislature may review adopted rules which have been published in the bulletin or in the administrative code. If reviewed, the standing committee which reviewed the rules shall report to the membership of the body its findings and recommendations concerning its review of the rules. If ordered by the presiding officer, the report of the committee shall be printed in the journal. A concurrent resolution may be adopted